

RECEIVED
CENTRAL FAX CENTER

SEP 12 2005

BEST AVAILABLE COPY

AFTER FINAL

Date of transmission: September 12, 2005
Number of pages, including cover: 8

To: Examiner A. Q. Choudhury
Board of Patent Appeals and Interferences
(571) 273-8300

From: Anne Vachon Dougherty
3173 Cedar Road
Yorktown Hts, NY 10598
phone (914) 962-5910
fax: (914) 962-5910

Re: Docket No: JP919990263US1
Serial No: 09/772,011

Comments:

Notice of Appeal, Request for Pre-Appeal Brief Conference and
Arguments in Support of the Request for Pre-Appeal Brief Conference attached

**THIS FAX CONTAINS CONFIDENTIAL MATTER. IF RECEIVED IN ERROR,
PLEASE CONTACT THE SENDER AT THE ABOVE TELEPHONE NUMBER.
PLEASE DO NOT RE-TRANSMIT THE CONTENTS OF THIS FAX.**

RECEIVED
OIPE/IAP

SEP 13 2005

RECEIVED
CENTRAL FAX CENTER

SEP 12 2005

PTO/SB/33 (07-05)

Approved for use through 10/10/200x. OMB 0651-0290
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

BEST AVAILABLE COPY

Doc Code: AP.PRE.REQ

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office, Washington, DC, as a facsimile transmission addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] Faxed to (571) 273-8300 on <u>September 12, 2005</u> Signature _____</p> <p>Typed or printed name <u>Anne Vachon Dougherty</u></p>		Application Number 09/772,011	Filed 1/27/01
		First Named Inventor Feng, Nan	
		Art Unit 2143	Examiner A. Choudhury
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>30,374</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p><i>Anne Vachon Dougherty</i> Signature</p> <p><u>Anne Vachon Dougherty</u> Typed or printed name</p> <p>(914) 962-5910 Telephone number</p> <p>September 12, 2005 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p> <p>This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p> <p>If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.</p>			

ARGUMENTS IN SUPPORT OF REQUEST FOR PRE-APPEAL CONFERENCE
SERIAL NUMBER 09/772,011

BEST AVAILABLE COPY

The Examiner has rejected all of the claims under 35 USC 102(b) as anticipated by the teachings of the Ballard patent (hereinafter "Ballard"). For the reasons set forth below, Applicants believe that the Examiner has erred in maintaining 102 anticipation rejections against the pending claims.

The present invention is directed to a system, method, and program storage device for providing load balancing among a plurality of mirror servers. When a user at a client machine contacts a web site, the web page and a predetermined script are transmitted to the client. The predetermined script is automatically executed at the client to establish connections with each of the plurality of mirror servers which are associated with the web page and which can serve the client's request. As the connections are established between the client and each of the mirror servers, the response times are measured. The client selects the mirror server with the most favorable response time, maintaining the connection with the selected mirror server and terminating the connections with the remaining mirror servers. The "load balancing" is done at the client location by evaluating the response times, which are assumed to be a function of current workload. The claims expressly recite an apparatus, a program storage device, and a method including explicit means and steps for transmitting both a web page and script to a client; automatically executing the script to create the connections and

BEST AVAILABLE COPY

**ARGUMENTS IN SUPPORT OF REQUEST FOR PRE-APPEAL CONFERENCE
SERIAL NUMBER 09/772,011**

measure response times; and, selecting the mirror server with the shortest response time.

The Ballard patent is directed to client-side load balancing in a client/server network. Ballard teaches that each client has **client-resident** software comprising a server selection function (shown at box 52 of Fig. 6). In addition, each client is provided with a load balance list which is created, updated, and distributed to clients by a system administrator (see: Col. 6, lines 66-67). The load balance list consists of an identification of server computers, and may also include a load percentage for each of the listed server computers (see: Col. 6, lines 5-8). The load percentage is a target percentage, representing what percentage of the client's request load should be sent to each server. As representatively taught at Col. 6, lines 12-14, "Fig. 4A, for example, shows a load balance list in which the load is to be divided equally among four ISP server computers." When a client has a data request to send to a server, the client accesses the load balance list and **executes the client-resident server selection function to select one of the servers on the list**, and then attempts to send the request to the selected server. When the load balance list includes load percentages, then "[o]ver time...the actual load percentage for each server computer in the list 54 converges to the specified percentage in the list 54" (Col. 6, lines 41-44). In other words, the load selection function manages toward the target

**ARGUMENTS IN SUPPORT OF REQUEST FOR PRE-APPEAL CONFERENCE
SERIAL NUMBER 09/772,011**

percentages. "According to an alternative scheme, the load select function may randomly select one of the servers in the list 54 or may perform a round-robin selection, or perform some mathematical computation" (see: Col. 6, lines 41-48).

Applicants respectfully assert that the Examiner erred in citing the Ballard patent as a 102 reference since Ballard neither teaches nor suggests a client directly contacting a web site, the web site responding to the client by transmitting the web page and predetermined executable script; the client executing the predetermined script to establish connections with all of the plurality of mirror servers accessible using that script; or, the client measuring the response times and selecting the one of the mirror servers with the most favorable response time. Rather, the Ballard system executes client-resident software to select a single server to be contacted. Moreover, the single server is selected not based on response time, but is selected based on a target percentage, randomly, in a round-robin fashion, or based on a mathematical computation (see: Col. 6, lines 41-48).

It is well established under U. S. Patent Law that, for a reference to anticipate claim language under 35 USC 102, that reference must teach each and every claim feature. Since the Ballard patent does not teach transmitting predetermined script with a web page from the server group to the client in response to a client request, does not teach executing received script at

BEST AVAILABLE COPY

BEST AVAILABLE COPY

**ARGUMENTS IN SUPPORT OF REQUEST FOR PRE-APPEAL CONFERENCE
SERIAL NUMBER 09/772,011**

the client, does not teach the client creating connections with a plurality of mirror servers, does not teach client measurement of response times, and does not teach client selection of a mirror server having the most favorable response time, it cannot be maintained that the Ballard patent anticipates the invention as claimed in independent Claims 1, 11, and 20. Applicants further point out that a reference which does not anticipate the language of independent claims cannot be said to anticipate the language of claims which depend therefrom and add further limitations thereto. Accordingly, Applicants conclude that the Examiner erred in rejecting the pending claims as anticipated by the Ballard patent.